National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: December 13, 1996

TO: Peter W. Hirsch, Regional Director, Region 4

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: ILA (Bermuda Container Lines), Case 4-CE-107

362-6790, 420-9035, 440-5001, 530-5701, 530-8018-2569, 584-1250-5000, 584-3740-1700

This case was submitted for advice as to whether the Union violated Section 8(e) by filing a grievance and/or obtaining an arbitration award against the Employer for violating two separate contractual restrictions on subcontracting unit work. ILA (Bermuda Container Lines), Case 4-CE-107

facts

Charging Party Bermuda Container Line Ltd. (BCL) ships goods between the United States and Bermuda through the Port of New York. Respondent International Longshoremen's Association (ILA) represents longshoremen in ports all along the Atlantic and Gulf Coasts, including New York. BCL does not directly employ longshoremen or any other ILA-represented labor to load and unload cargo onto and off of its single ship. Rather, BCL contracts with Maher Terminals, a stevedoring agent, for this service. The ILA represents Maher's employees.

BCL and Maher are members of the New York Shipping Association (NYSA), a multi-employer association which represents carriers, stevedoring companies and related employers operating in the Port of New York for various purposes, including collective bargaining. Many employers located in other ILA-organized ports along the Atlantic and Gulf coasts have similarly combined to form local port associations. In addition, the Container Carriers Council (CCC) is the collective bargaining representative for approximately 30 containerized shipping companies which collectively account for approximately 90% of cross-Atlantic traffic. Although the CCC does not operate out of any particular port, its employer-members may and often do belong to individual port associations as well. However, at least eight containerized shippers are members solely of CCC.

Until the popularization of containerized cargo in the late 1950s and early 1960s, shippers and stevedores negotiated separate single-port collective bargaining agreements with the ILA and its locals at individual ports on the Atlantic and Gulf Coasts. Many of the ILA locals in these ports had obtained these multi-employer single-port agreements for years and some had been certified by the Board, including ILA locals in the Port of New York.[(1)] However, by the late 1950s, the parties recognized the revolutionary effect that containerization visited on the longshore industry by affording carriers the opportunity to call at any port up and down the coast. Rather than breaking palletized cargo down to its components and reloading them onto trucks at great expense as was the prior practice, containerization allowed carriers to economically and efficiently transport cargo to their ultimate destination simply by loading an entire container onto an integrated tractor-trailer. As a result, carriers were no longer bound by economic necessity to ports of call closest to their customers. Non-containerized carriers, however, continue to ship non-palletized, "break-bulk" cargo, particularly for commodities. In an attempt to stabilize shipping patterns throughout the Atlantic and Gulf Coasts after the advent of containerization, since the 1960s carriers, stevedoring agencies and the ILA developed an alternate, two-step process of collective bargaining.

1. Master and Local Contract Bargaining

Bargaining begins when a group of port associations from Maine to Texas combine to negotiate a multi-port Master Contract with the ILA covering certain basic terms and conditions of employment that will be common to signatory employers in every participating port association.[(2)] The current Master Contract covers such issues as wages, the amount of employer

contributions to multi-port fringe benefit plans, hours of work, the size of employee work gangs, a drug and alcohol policy, ILA jurisdiction, the term of the agreement, and a grievance and arbitration procedure. In addition, the Master Contract incorporates the ILA's Rules on Containers. Although there is no formal written structure for Master Contract bargaining, it is clear that each participating port association must first affirmatively agree to be bound by the results of bargaining. The association then sends a representative to the bargaining table. Any association which refuses to be bound beforehand or remains silent on the matter is not permitted to participate further. Thus, at the start of the current round of Master Contract negotiations in 1995, one participant (the West Gulf Maritime Association) indicated that its Board of Directors had not yet voted as to whether it would agree to be bound by the results of the negotiations, but requested that it be allowed to participate nonetheless. It was nevertheless excluded until the next bargaining session, by which time it had agreed to be bound. Additionally, although the NYSA's by-laws require that all negotiated collective-bargaining agreements are subject to approval by the NYSA's board of directors, ratification of a Master Contract apparently is pro forma in light of the organization's prior agreement to be bound.

After finalization of a Master Contract, ILA locals negotiate separate local agreements with each port association. These single port agreements cover a wide variety of issues left open by the Master Contract, such as work rules, hours of work, vacation and holiday leave, union security and dues check-off, contributions to certain funds, health and safety rules, minimum guaranteed income, prohibitions against strikes or lockouts, overtime, local Union recognition and seniority. In addition, local agreements govern working conditions when unit employees load and unload non-containerized, or break-bulk, cargo.[(3)]

The NYSA and the ILA on behalf of its affiliated locals are signatories to a local New York port agreement, a lengthy document which resolves many of the above terms and conditions of employment. The parties also appended the Master Contract to the local agreement. In the preamble to the local agreement, the NYSA recognized the ILA and its affiliated locals as the representative of employees covered under the contract. A local port association such as the NYSA has no authority to approve or disapprove of another port association's local contract.

Before bargaining begins, the NYSA informs its members by letter of its decision to participate in both Master Contract and local agreement negotiations. Thus, prior to the negotiations leading to the last two Master Contracts, the NYSA informed its members, including BCL, that unless they withdrew from the Association, "as a member of NYSA, you will be bound by any labor agreement negotiated by NYSA with the ILA which is subsequently accepted by a majority of the members at a meeting called for such purposes ...."[(4)] BCL did not respond.

Neither the Master Contract nor the New York port agreement contains any specific description of the relevant bargaining unit to be covered by the contracts, although it is clear that the local New York port agreement covers a Board-certified unit.[(5)] In the fall of 1996, the parties agreed upon a successor to the 1993 Master Contract which was about to expire. The new agreement contains the following, new provisions:

1. SCOPE OF AGREEMENT

The multi-employer Management group consists of the Carriers Container Council, Inc., all other multi-employer associations names herein [as well as certain other stevedores, terminal operators and ocean carriers.] Management recognizes the ILA as the exclusive bargaining representative of longshoremen, clerks, checkers and maintenance men who are employed on all ships and terminals in all ports on the East and Gulf Coasts of the United States, inclusive from Maine to Texas, and the ILA recognizes Management as the exclusive employer representative in such ports or districts.

The parties additionally agreed that the Master Contract is a "full and complete agreement" on all containerization issues "from Maine to Texas," as "supplemented" by local contracts in each port so long as local terms are "consistent" with the Master Contract.

2. The Instant Charge

Both the master and local agreements contain restrictions on a signatory employer's right to subcontract bargaining unit work. The preamble of the extant NYSA-ILA local agreement provides that,

The employer-members of the [New York Shipping] Association agree that they will not directly perform work done on a pier or terminal or contract out such work which historically and regularly has been and currently is performed by employees covered by this agreement or employees covered by ILA craft agreements unless such work on such pier or terminal is performed by deepsea employees covered by ILA agreements for longshore and related crafts at deepsea piers and terminals.

Sections 1 and 2 of the Master Contract's Containerization Agreement provide that,

Management and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered by their agreement to perform such work.

...

Management, the Carriers, the direct employers and their agents shall not contract out any work covered by this Agreement.

BCL has operated in the Port of New York since 1979. However, in February 1996[(6)] BCL decided to switch operations to the non-ILA port of Salem, New Jersey, in order to take advantage of the lower, non-union labor costs there.[(7)] Thus, in April BCL notified Maher, its stevedore agency in the port of New York/New Jersey, that it would no longer need Maher's services.[(8)] On May 21, the ILA filed a grievance alleging that the carrier's prospective move to Salem violated the no-subcontracting provisions of both the master and local agreements, as cited above. In contemplation of an upcoming arbitral hearing, BCL suspended implementation of its move to Salem.

On June 10 members of the Local Industry Grievance Committee for the Port of New York (the arbitrator) sustained the Union's grievance. It unanimously held that,

the Containerization Agreement to which BCL is bound requires BCL to use longshore employees covered by the Master Contract to load and discharge containers on and off BCL ships and perform all other container work for BCL at any other port at which BCL ships call on the Atlantic and Gulf Coasts of the United States.

...

While Bermuda Container Line or any other carrier bound by the Master Contract is free to leave the Port of New York and New Jersey ("NY-NJ Port") at any time, when it relocates its operations to a port on the Atlantic or Gulf Coasts of the United States, it must use employees covered by the Master Contract to stevedore its vessels and perform container work related thereto.

As BCL was thereby put on notice of its purported contractual obligations, the arbitrator held that its use of non-ILA labor in Salem, New Jersey would constitute a willful violation of the Master Contract, causing BCL to be liable for liquidated damages in the amount of $2000 for each container handled in contravention of the Master Contract. The arbitral panel based its decision solely on the relevant clauses in the Master Contract; it did not construe the local agreement's no-subcontracting clause. On November 21, 1996, an appellate panel affirmed the arbitrator's decision. BCL has remained in the Port of New York.

action

We conclude that because the Employer belongs to a multi-port bargaining unit along the Atlantic and Gulf Coasts, the Union did not violate Section 8(e) by obtaining an arbitral award prohibiting the Employer from contracting with non-Union employers to perform bargaining unit work. However, we also conclude that the Union violated Section 8(e) by grieving the Employer's alleged violation of the local agreement's facially unlawful union signatory clause.

A. The Arbitration over the Master Contract's No-

Subcontracting Clause

1. The Appropriate Bargaining Unit

The Charging Party contends that the arbitrator transformed the Master Contract's no-subcontracting clause into an unlawful union signatory clause by prohibiting BCL from contracting with non-ILA stevedores located outside of what BCL asserts to be its single port, New York bargaining unit. The Respondent, however, maintains that the appropriate bargaining unit is not limited to New York, but rather stretches all along the Atlantic and Gulf Coasts, including the port of Salem, New Jersey. Thus, the ILA contends that the arbitrator satisfied the Union's lawful, primary goal of preserving bargaining unit work by prohibiting BCL from contracting with a non-Union stevedore within this coast-wide bargaining unit. Thus, the most critical issue concerns the scope of the bargaining unit.

The Board has noted that "a multiemployer unit, unlike other types of bargaining units, is consensual in nature."(9) Thus, in order to join a multi-employer bargaining unit, an employer must clearly demonstrate an unequivocal intention to be bound by the results of collective bargaining on a group rather than an individual basis.(10) The evidence sufficient to establish an unequivocal intention to be bound by group action "varies with the circumstances involved."(11) Nonetheless, it is clear that an employer demonstrates such an intention by granting a multi-employer association actual or apparent authority to negotiate on its behalf.(12) Thus, in general "an employer does not become part of a multiemployer bargaining group unless it participates (either personally or by an authorized representative) in joint bargaining with the Union."(13)

We conclude that the participants to Master Contract negotiations, including the NYSA (and ultimately BCL through its agent, the NYSA), clearly and unequivocally agreed to be bound by the results of multi-port bargaining, thereby creating a multi-port bargaining unit. It is uncontroverted that each party sitting at the negotiating table, including the NYSA, agreed at the very start of negotiations to be bound by the results of bargaining. Any party which is unable or unwilling to be bound by group action is excluded from the proceedings. In fact, during the course of bargaining for the current 1996 agreement, one party, the West Gulf Maritime Association, was excluded from the table until its representatives unequivocally declared that it agreed to be so bound. Thus, as the Board has held elsewhere, "[t]he fact that the members of the [multi-employer] Association have ... regularly participated in negotiations, with the understanding, pursuant to formal resolution [prior to the start of bargaining], to abide by a majority decision of the members, clearly shows the assumption of an obligation to adhere to the resultant uniform agreements."(14)

The parties clearly agreed to be bound by the results of joint bargaining even though they concurrently negotiate single-port local agreements. In Sands Point Nursing Home, the Board found that a multi-employer bargaining unit existed notwithstanding local bargaining which created differences in employee conditions among participating employers. The Board held that since individual bargaining "arose within the framework of the multiemployer bargaining relationship and was contemplated by the multiemployer Master Agreement," it was insufficient to vitiate the parties' intent to be bound by the results of group bargaining.(15) Similarly, in The Kroger Co.,(16) the Board held that the employer was bound to a multi-employer agreement covering a multi-employer bargaining unit despite its refusal to be bound by the results of joint negotiations on a single subject, pensions. The Board recognized that, "[t]he problems of each member of a multi-employer group are understandably not always identical."(17) Thus, it would be "unrealistic" to preclude employers from negotiating separately with unions over matters of peculiar concern to the employer. In sum, the Board held that "we do not believe that the exercise of a mutually recognized privilege to bargain individually on limited matters, as in the present case, is inconsistent with the concept of collective bargaining in a multiemployer unit."(18)

Here, the parties' practice of conducting local negotiations is consistent with their intention to be bound in a coast-wide unit. Local terms and conditions do not contradict specific terms set forth in the Master Contract.(19) Rather, the parties decided to structure bargaining so as to jointly resolve only those issues which are common to the coast-wide unit, as "supplemented" by local contracts in each port so long as local terms are "consistent" with the Master Contract. The fact that the Master Contract covers only a subset of the bargainable issues does not belie the parties' intention to be bound in a multi-port bargaining unit. Neither the Board nor Congress, in its description of the subjects of bargaining in Section 8(d), has articulated a minimum quantum of topics required to create a collective bargaining agreement. Rather, the Board simply acknowledges that, "[b]y

definition, a collective-bargaining agreement is the embodiment of the terms and conditions of employment reached as the result of contract negotiations between the employer and the accredited representative of his employees."[(20)] The Master Contract speaks to such core topics as wages, hours, union jurisdiction, arbitration, term of contract, and containerized work rules; in addition, it addresses further subjects inasmuch as it is "supplemented" by local agreements. Thus, it is clear that the Master Contract resolves sufficient terms and conditions of employment to constitute a legally binding labor agreement applicable to a consensual, multi-port bargaining unit.[(21)]

The informal structure of Master Contract bargaining does not detract from the binding nature of the multi-employer bargaining. It is clear that there are no requirements that participants to multi-employer bargaining adopt formal structures; rather, their intention to be bound is what is decisive.[(22)] We further conclude that the evidence is sufficient to establish that BCL imbued the NYSA with the authority to engage in multi-port bargaining on its behalf. BCL, as a long-standing member of the NYSA, clearly was on notice that the NYSA intended to conclude another multi-port agreement when the shipping company granted sub silentio the NYSA's request for such bargaining authority by letter prior to the start of the 1990, as well as 1996, negotiations. BCL thereby granted to the NYSA authority to bargain on its behalf.[(23)]

2. Employer-employee Relationship

Despite BCL's contrary contention, we further conclude that the Master Contract is enforceable against BCL within the single coast-wide bargaining unit even though it does not directly employ longshoremen. On the Pacific Coast, the Pacific Maritime Association (PMA), the collective bargaining representative of all employing entities (shippers, stevedores and the like) operating in any port on the west coast, and the west coast longshoremen union, the International Longshoremen's and Warehousemen's Union (ILWU), negotiate a single master contract of coast-wide application, covering all major terms and conditions of employment in a coast-wide bargaining unit certified by the Board in 1938.[(24)] In California Cartage,[(25)] the Board rejected the contention that PMA-member carriers are neutrals in a dispute with the ILWU. The Board noted that even though stevedores, not carriers, directly employ longshoremen, all carriers in the shipping industry have a "vital interest" in their employment conditions. To that end, the carriers banded together and delegated their bargaining authority to the PMA in an attempt to stabilize employment relations on the dock. Noting the history of labor strife among longshoremen, the Board held that, "in this particular industry the community of interest of the participating employers is unmistakable."[(26)]

BCL has been a member of the NYSA since the inception of its business in the United States more than 15 years ago. It has been party to successive agreements dictating the terms and conditions of employment for longshoremen throughout that period of time. Under those contracts BCL has contributed to trust funds supporting longshore employment benefits and has paid container royalties which are distributed to longshoremen in the form of wage supplements. Thus, under the facts of this case in this industry, we conclude that BCL is an employer of longshoremen within the coast-wide bargaining unit.

3. Section 8(e) and Work Preservation

An agreement that an employer will cease doing business with another person or entity is unlawful under Section 8(e) unless the agreement has the object of preserving bargaining unit work for unit employees and is not "tactically calculated to satisfy union objectives elsewhere."[(27)] In NLRB v. International Longshoremen's Association (ILA II), the Supreme Court noted that a lawful work preservation agreement must (1) have as its objective the preservation of work traditionally performed by bargaining unit employees represented by the union, rather than some secondary goal; and (2) be directed at work which the contracting employer has the power to assign to employees.[(28)] Under this latter "right of control" test, the Board will infer that if the employer against whom the union takes action has no power to assign the disputed work, then the union's object must logically be to influence a neutral employer which does have power over the work.[(29)]

Thus, contract clauses which prohibit subcontracting entirely, or require subcontractors to employ unit employees, have a primary work preservation object and are lawful.[(30)] On the other hand, contract clauses which limit subcontracting to employers who are signatories to union contracts in general are proscribed by Section 8(e) because they do not protect unit jobs but rather are directed at furthering general union objectives.[(31)] Thus, the Board has held unlawful clauses that limit subcontracting to situations in which the signatory employer uses contractors who will "execute",[(32)] "observe" or "comply

with",(33) or "be bound to"(34) a collective-bargaining agreement. Such agreements necessarily have a secondary objective because they "excee[d] the bounds of restriction necessary to protect [unit employees'] interests."(35) Unlike lawful "union standards" clauses, which apply only economic contract terms and preserve unit jobs by removing the economic incentive to subcontract outside the bargaining unit, these broader clauses require adoption of union recognition and security, grievance procedures, and other noneconomic terms that are not needed to preserve work opportunities for unit employees.(36)

On its face, the Master Contract's no-subcontracting clause appears to ban subcontracting in its entirety. However, the arbitrator ruled that BCL is free to subcontract unit work at any time so long as it agrees to "use employees covered by the Master Contract" to stevedore its vessels within the single, coast-wide bargaining unit up and down the Atlantic and Gulf Coasts, including Salem, New Jersey. The arbitrator thereby limited the ILA's work preservation objective to subcontracting within the coast-wide bargaining unit. Clearly, the choice of using Union or non-Union labor in Salem -- or New York, Philadelphia or any other location within the bargaining unit -- has an effect on the work opportunities of employees situated within the unit. In other words, the arbitrator's decision did nothing more than safeguard the ILA's work preservation objective within its bargaining unit. Accordingly, we conclude that the Union did not violate Section 8(e).

B. The Grievance over the Local Contract's No-

Subcontracting Clause

A party violates Section 8(e) by seeking to enforce a facially unlawful hot cargo provision. While the filing of a grievance to enforce a facially lawful clause in an unlawful manner does not constitute an "entering into",(37)

filing a grievance over a provision unlawful on its face constitutes a unilateral reaffirmation of the unlawful clause.(38)

Here, the Union further alleged in its grievance that BCL violated the local agreement's no-subcontracting clause. That provision, as opposed to the no-subcontracting clause found in the Master Contract, permits subcontracting only to firms employing employees who are "covered by this agreement or employees covered by ILA craft agreements ...." (Emphasis supplied.) Thus, under this provision, BCL may subcontract unit work only if the contracting employer agrees to recognize the ILA and is party to any ILA agreement, not just the Master Contract applicable to unit employees in the single, coast-wide bargaining unit. Obviously, this clause is not limited to preserving work within the bargaining unit. Rather, it satisfies the ILA's goals of extending the reach of contracts covering other bargaining units to which the participants in Master Contract bargaining do not belong.(39) In fact, the clause is nearly identical to a similar provision in a past PMTA agreement which the Board held to have constituted an unlawful hot cargo clause.(40)

In sum, we conclude that because the Employer belongs to a multi-port bargaining unit along the Atlantic and Gulf Coasts, the Union did not violate Section 8(e) by obtaining an arbitral award prohibiting the Employer from contracting with non-Union employers to perform bargaining unit work. However, we also conclude that the Union violated Section 8(e) by grieving the Employer's alleged violation of the local agreement's facially unlawful union signatory clause.(41)

B.J.K.

cc: Division of Operations-Management

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[1] New York Shipping Association, 116 NLRB 1183 (1956); New York Shipping Association, 107 NLRB 364 (1953).

[2] The number of port associations participating in this bargaining changes from contract to contract. The current Master Contract was signed by the port associations for New York/New Jersey, Boston, and Southeast Florida, as well as the CCC and an amalgam of port associations bound together as the Council of North Atlantic Shipping Associations. However, in addition to the direct participants, many other port associations did not participate in Master Contract negotiations but agreed to be

bound by the resulting contract.

[3] Although precise numbers are unavailable, break-bulk cargo represents a significant amount of work for employees throughout the Atlantic and Gulf Coasts.

[4] The NYSA states that ratification of a Master Contract is "pro forma" because the Association and its members have already agreed to be bound by the results of bargaining.

[5] The NYSA local agreement provides that the contract applies to members' employees performing specified longshore duties. The parties to the Containerization Agreement, which is incorporated in the Master Contract, recognized the work jurisdiction of ILA employees covered by "their agreements with the ILA" over work historically performed by longshoremen.

[6] All dates hereafter are in 1996 unless specified otherwise.

[7] Although Salem, New Jersey falls within the geographical jurisdiction of the ILA's Philadelphia locals, it is a non-ILA port.

[8] As set forth above, BCL contracts with Maher to load and unload its ship; thus, it does not now nor has it ever employed longshoremen directly.

[9] Ruan Transport Corp., 234 NLRB 241, 242 (1978).

[10] Sands Point Nursing Home, 319 NLRB 390 (1995); Joseph J. Callier, 243 NLRB 1114, 1117 n.8 (1979), enf'd 630 F.2d 595 (8th Cir. 1980); Van Eerden Co., 154 NLRB 496, 499 (1965); Electric Theatre, 156 NLRB 1351, 1352 (1966) (necessary consent that distinguishes multi-employer bargaining may be demonstrated by "a controlling history of collective bargaining on such a basis, or on an unequivocal agreement of the parties to bind themselves to a course of group bargaining in the future"). See also Ruan Transport, 234 NLRB at 242 and cases cited therein at nn.5-6. The test for the creation of a multi-employer bargaining unit is distinct from the standard governing a merger of bargaining units within a single employing entity, which requires "unmistakable evidence that the parties mutually agreed to extinguish the separateness of the previously recognized or certified units." Utility Workers, Local 111 (Ohio Power Co.), 203 NLRB 230, 239 (1973) (emphasis supplied), enf'd 490 F.2d 1383 (6th Cir. 1974). Compare cases cited supra with Duval Corporation, 234 NLRB 160, 161 (1978) (merger of units within single employer demands "unmistakable evidence that the parties intended to extinguish the separateness of the previously recognized or certified units"). Accordingly, we do not rely on the intra-employer unit merger line of cases or the established legal test espoused therein. Furthermore, insofar as we conclude that the appropriate unit comprises the Atlantic and Gulf Coasts, whether a single coast-wide unit can simultaneously exist alongside separate port-wide units covering the same employees is not an issue. See Boston Edison Co., 290 NLRB 549 (1988).

[11] Pacific Metals Company, 91 NLRB 696, 699 (1950).

[12] American Bank Note Co., 281 NLRB 617, 620 (1986) (employer that became member of multi-employer group and expressly authorized group to represent it was bound to successive group-negotiated contracts); Barnett Supply Co., 278 NLRB 1005, 1008 (1986) (employer ratified manager's adoption of multi-employer contract by enforcing contractual union security clause); Hillsdale Inn, 267 NLRB 982 n.2 (1983) (employer part of multi-employer bargaining unit and bound by multi-employer agreement where multi-employer association had apparent authority to bargain on employer's behalf).

[13] Ruan Transport Corp., 234 NLRB at 242.

[14] Rayonier Incorporated, 52 NLRB 1269, 1275 (1943) (footnotes omitted).

[15] Sands Point Nursing Home, 319 NLRB at 390.

[16] 148 NLRB 569 (1964).

[17] Id. at 573.

[18] Ibid. See also Custom Color Contractors, 226 NLRB 851, 854 n.16 (1976), enf'd sub nom. NLRB v. Beckham, 564 F.2d 190 (5th Cir. 1977) ("Separate agreements between unions and individual employers as to limited matters is not inconsistent with multiemployer bargaining.") The Kroger Board likened individual bargaining within a multi-employer framework to multiplant bargaining within a single employer where the parties leave certain local matters to local negotiations. Kroger, 148 NLRB at 573 n.6.

[19] Cf. Burns International Security Service, 257 NLRB 387 (1981), where the Board held that a multi-employer bargaining unit did not exist because the various employers' local agreements specifically contradicted and/or declined to adopt terms set forth in the multi-employer contract.

[20] American Smelting and Refining Co., 167 NLRB 204, 209 (1967), enf'd 406 F.2d 552 (9th Cir. 1969), cert. den. 395 U.S. 935 (1969). Accord: Management Training Corp., 317 NLRB 1355, 1357 (1995) (Board will not decline jurisdiction over employer that cannot meaningfully bargain over all 8(d) subjects, including economic issues).

[21] The instant matter is thus distinguishable from cases in which the Board has held that "contracts" containing only a jurisdiction, no-strike and unlawful union-shop clauses are not sufficiently comprehensive so as to constitute a complete collective bargaining agreement. See Merritt-Chapman & Scott Corporation, 118 NLRB 380, 382 (1957), enf'd 259 F.2d 741 (7th Cir. 1958) (document not a collective bargaining agreement insofar as it did not contain a termination date or any express terms and conditions of employment); Consolidated Western Steel Corp., 108 NLRB 1041, 1043 (1954).

[22] See, e.g., Kroger, 148 NLRB at 571 (multi-employer bargaining created multi-employer unit despite lack of formal multi-employer association, constitution, dues, fees or binding rules of procedure).

[23] See cases cited supra at 8 n.12.

[24] Shipowners' Assn. of the Pacific Coast, 7 NLRB 1002 (1938), rev. dismissed sub nom. American Federation of Labor v. NLRB, 103 F.2d 933 (D.C. Cir. 1939), aff'd 308 U.S. 401 (1940).

[25] ILWU (California Cartage), 208 NLRB 994 (1974), aff'd sub nom. Pacific Maritime Association v. NLRB, 515 F.2d 1018 (D.C. Cir. 1975), cert. den. 424 U.S. 942 (1976).

[26] California Cartage, 208 NLRB at 997. In contrast with the various employer organizations operating on the east coast, the PMA's duties extend well past its representative capacity. Thus unlike the NYSA or any other Atlantic or Gulf coast port authority, the PMA operates "dispatch halls" in each port and even pays longshoremen by checks issued by the PMA. Id. at 1003. Nevertheless, although multi-employer bargaining on the Pacific coast differs from that on the east coast, the relationships between carriers and stevedores in Atlantic and Gulf coast ports exhibit similar characteristics to those on the west coast.

[27] National Woodwork Manufacturers Association v. NLRB, 386 U.S. 612, 644-645 (1967).

[28] 473 U.S. 61, 76 (1985); NLRB v. Enterprise Assn. of Pipefitters, Local No. 638, 429 U.S. 507 (1977); National Woodwork, supra. See also NLRB v. International Longshoremen's Association (ILA I), 447 U.S. 490, 504-05 (l980).

[29] ILA I, 447 U.S. at 510. As the Supreme Court noted, "[t]he touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-*à*-vis his own employees." National Woodwork, 386 U.S. at 644-45.

[30] Newspaper and Mail Deliverers (Hudson News), 298 NLRB 564 (1990); Milk Drivers Union Local 753 (Pure Milk Assoc.), 141 NLRB 1237, 1240 (1963), enf'd 335 F.2d 326 (7th Cir. 1964).

[31] Teamsters Local 610 (Kutis Funeral Home), 309 NLRB 1204 (1992); District 2, Marine Engineers (Grand Bassa Tankers), 261 NLRB 345, 348-49 (1982); IBEW Local 437 (Dimeo Construction Co.), 180 NLRB 420 (1969).

[32] Chicago Dining Room Employees, Local 42 (Gaslight Club), 248 NLRB 604, 605 (1980); Teamsters Local 89 (Robert E. McKee, Inc.), 254 NLRB 783, 784-786 (1981), enf'd 684 F.2d 359 (6th Cir. 1982).

[33] Los Angeles County District Council of Carpenters, 242 NLRB 801, 802-803 (1979), enf'd sub nom. NLRB v. Associated General Contractors of California, 709 F.2d 532 (9th Cir. 1983); Dimeo Construction Co., supra.

[34] District Council of Carpenters of Portland and Vicinity, 243 NLRB 416, 418-20 (1979).

[35] District Council of Carpenters of Portland, 243 NLRB at 420.

[36] See Retail Clerks Union Local 770 (Hughes Markets), 218 NLRB 680, 683 (1975); Dimeo Construction, 180 NLRB at 421.

[37] Sheet Metal Workers Local 27 (AeroSonics), 321 NLRB No. 79, slip op. at p. 1 n.3. (June 21, 1996).

[38] Carpenters Local 745 (SC Pacific), 312 NLRB 903, 904 n.5 (1993), enf'd 73 F.3d 370 (9th Cir. 1995); Dan McKinney Co., 137 NLRB 649, 657 (1962).

[39] Since the mere filing of a grievance to enforce a facially unlawful clause is violative of Section 8(e), it is immaterial that the arbitrator failed to construe the local agreement.

[40] ILA (Board of Harbor Commissioners), 137 NLRB 1178, 1186 (1962), enf. den. in rel. part 331 F.2d 712 (3d Cir. 1964) (in light of Section 8(b)(4)(B) violation, court found it unnecessary to reach Section 8(e) issue without sufficient factual record), where the Board held that the purpose of the no-subcontracting clause "is not to protect the work for employees in the unit but rather to protect such work for members of the union in general."

[41] Questions about the transfer of this case to a New York regional office should be addressed to the Division of Operations-Management.